

Remarks

This is in response to the Office Action mailed October 4, 2002. Claims 1-3, 5, 11-14, 16, 20-21, 23-27, 29-32, 34, 38-40 and 42 have been amended.

**I. Rejection Under 35 U.S.C. §112, Second Paragraph**

The Examiner has rejected claims 1-42 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicants regard as the invention. Specifically, the Examiner contends that the expression “metallocene-catalyzed isotactic random copolymer” is confusing. Applicants have amended claims 1, 14, 16, 24, 29, 30 and 42, to replace the objectionable language with wording that should remove any possible confusion. Accordingly, the rejection under 35 U.S.C. §112, second paragraph, should be withdrawn.

**II. Rejection Under 35 U.S.C. §102(b)**

An invention is said to be “anticipated” only if each and every element set forth in the claim is found, either expressly or inherently, within a single prior art reference. *Verdegall Bros. V. Union Oil Co. of Cal.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). The fact that a certain characteristic *may* occur or be present in the prior art is not sufficient to establish inherency of that characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993) (*emphasis added*). Mere possibilities or even probabilities are not enough to establish inherency. *See Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 20 U.S.P.Q.2d 1746 (Fed. Cir. 1991).

The Examiner has rejected claims 1-9, 11-15 and 42 under 35 U.S.C. §102(b) as being anticipated by JP-11-060833. This reference, however, discloses materials which are entirely different from Applicants’. Specifically, JP-11-060833 discloses a polymer blend of a metallocene-catalyzed random copolymer component (Component A) with another random copolymer component (Component B), which is prepared using a Ziegler-Natta-type catalyst (see paragraph [0014]).

The JP-11-060833 does not constitute an anticipatory reference in that it employs such a blend, while Applicants’ claims are directed to a random copolymer of propylene

and ethylene prepared using a metallocene catalyst useful in the polymerization of isotactic polypropylene and without the use of other non-metallocene-catalyzed random copolymers. Accordingly, the rejection of these claims based upon JP-11-060833 should be withdrawn for this reason.

Furthermore, JP-11-060833 only discloses materials having melting point temperatures of greater than 125°C (See first column of Table 1). Applicants, claims 5 and 11 specify melting point temperatures that are lower than this. This is supported in the specification at page 14, lines 25-28, and in Table 1 (Product #4) and Table 4 (MRCP-4). Additional claimed properties, such as haze, gloss, xylene solubles, etc. are also not shown or taught by the JP-11-060833 reference nor could it be argued that these are inherent within the disclosed materials of JP-11-060833 as the Japanese reference is directed to a blend of two different materials that differs from Applicants' material. Accordingly, this reference fails as an anticipatory reference for these reasons and the rejection of these claims on this basis should be withdrawn.

The Examiner has further rejected claims 1-42 under 35 U.S.C. §102(b) based upon EP 0-669-348 A1. This reference, however, specifically excludes copolymers of ethylene (See page 3, lines 9-11). Applicants' claims require a copolymer of propylene and ethylene. Therefore, this reference also fails as an anticipatory reference and the rejection of claims 1-42 under 35 U.S.C. §102(b) should be withdrawn.

### **III. Rejection Under 35 U.S.C. §103(a)**

The Examiner has further rejected claims 1-42 under 35 U.S.C. §103(a) based upon the combination of EP 0-669-348 A1 and JP-11-060833.

In order to establish a *prima facie* case of obviousness, the prior art references must teach or suggest all of the claim limitations when combined. See *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974); and MPEP 2143.03.

The combination of EP 0-669-348A1 and JP-11-060833 fail to teach or suggest all of the claim limitations of Applicants' claims and therefore fail to establish a *prima facie* case of obviousness. Specifically, there is no teaching by such combination of a random copolymer of propylene and ethylene, without the use of a non-metallocene-

catalyzed random copolymer, and that have the claimed properties, such as melting point, haze, gloss and xylene solubles, etc. Accordingly, the combination of these references fails to establish a prima facie case of obviousness and the rejection of the claims on this basis should be withdrawn.

#### **IV. Conclusion**

Applicants submit that the application is in a condition for allowance. Favorable action is therefore requested. If the Examiner believes that the prosecution of the present application can be expedited by addressing any outstanding issues over the phone, Applicants would invite the Examiner to contact the undersigned at the phone number provided.

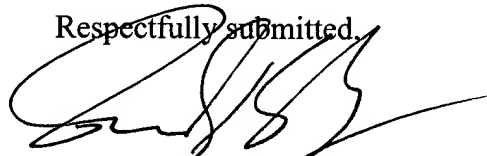
No fee or petition for extension of time is believed necessary for this response. If any fees are deemed necessary, the Commissioner is hereby authorized to charge them to Deposit Account No. 50-1899.

All future correspondence with respect to the above-referenced application should be addressed to:

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Respectfully submitted,



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